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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,832	12/20/2001	Fatih M. Ozluturk	I-2-103.3US	4400

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EXAMINER

QURESHI, AFSAR M

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 08/23/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/028,832

Applicant(s)

OZLUTURK, FATIH M.

Examiner

Afsar M Qureshi

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-27 and 29-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-27 and 29-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2,10</u> . | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. The indicated allowability of claims 17-27 is withdrawn in view of the newly discovered reference(s) to Hamalainen et al (US 6,072,787). Rejections based on the newly cited reference(s) follow.
2. Applicant is advised that the Notice of Allowance mailed on February 19, 2004 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 17-27, 29-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Hamalainen et al. (US 6,072,787).

Claims 17, 24, 29 and 33. Hamalainen et al. ('Hamalainen', hereinafter) disclose, in a CDMA system, establishing return channels of predetermined rates; allocating one or more channels and transmitting at given rate (see col. 5, lines 16-20, 65-67); monitoring communication and if the transfer rate does not support the communication then interrupting the call set up, dynamically adjusting data rates during communication and re-allocating transmission channels and continuing the transmission (see col. 7, lines 4-67, col. 8, lines 1-41).

The limitation "such that the sum of the data rates of the allocated channels is at least equal to the adjusted data rate and is not greater than the adjusted rate plus a predetermined limit" is inherent.

Claims 18-21, 25-27, 30, 31, 34 and 35. Hamalainen discloses, as a prior art, B and D channels in ISDN having data rates of 64 Kb/s and 16 Kb/s, respectively (see col. 2, lines 18-30).

ISDN interface structure (BRI, PRI) is known and old. It typically carries a voice and data channel, plus one low speed channel used for signaling, conforming to CCITT "2B+D" basic rate interface (BRI) standard. Each "B" channel runs at 64 Kb/s and the "D" channel runs at 16 Kb/s, "B" channel having greater data rate than "D" channel whereby multiple number of "B" channels (e.g., 23 B or 30 B) can be allocated. The structure changes to bit rate of 1.544 Mb/s or 2.048 Mb/s depending on user data rate.

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Claims 22, 23. Hamalainen discloses that the serving BSC assigns channel codes corresponding to the same set (see col. 7, lines 7-30).

Claim 32. Hamalainen discloses using assigned channel codes to communication channels from the same set (see col. 9, lines 1-23 and col. 10, lines 19-25). Allocating communication channels already discussed in the rejection of claim 17 above..


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grube et al (US 5,563,869) Disclose dynamically allocating wireless communication resources.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Afsar M Qureshi whose telephone number is (703) 308 8542. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (703) 305 4378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**AFSAR QURESHI**  
**PATENT EXAMINER**

August 4, 2004